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The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

The Purpose Of The Sherman Anti-Trust Law

On March 13, 1933, the United States Supreme Court, in *Appalachian Coals, Inc., et al. v. The United States* (53 S. Ct. 471), ordered dismissed (without prejudice) the bill of complaint brought under the Sherman Anti-Trust Act. Mr. Chief Justice Hughes, who delivered the opinion of the court, said therein that the purpose of that Act "is to prevent undue restraints of interstate commerce, to maintain its appropriate freedom in the public interest, to afford protection from the subversive or coercive influences of monopolistic endeavor. As a charter of freedom, the Act has a generality and adaptability comparable to that found to be desirable in constitutional provisions. It does not go into detailed definitions which might either work injury to legitimate enterprise or through particularization defeat its purpose by providing loopholes for escape. The restrictions the Act imposes are not mechanical or artificial. Its general phrases, interpreted to attain its fundamental objects, set up the essential standard of reasonableness. They call for vigilance in the detection and frustration of all efforts unduly to restrain the free course of interstate commerce, but they do not seek to establish a mere delusive liberty either by making impossible the normal and fair expansion of that commerce or the adoption of reasonable measures to protect it from injurious and destructive practices and to promote competition upon a sound basis."

Kenneth Kingsley

President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose, is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

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The Location of Property Sold by Foreign Corporations

The physical location of the article sold, at the time of the sale, is, on occasion, a strong factor in distinguishing between interstate and intrastate commerce, and, consequently, in determining the necessity for compliance with the particular restrictions placed upon foreign corporations by the various states. The Commerce Clause of the Constitution gives the Federal Government complete control over interstate commerce, and the Federal Government jealousy safeguards its right to regulate this important intercourse among the several states; but to enjoy the protection of the Commerce Clause there must be a transaction coming within the category of interstate commerce.

A transaction which has been definitely earmarked as interstate commerce is the use of soliciting agents by a foreign corporation, without more,—that is, the sending of an agent into, or the having of an agent in, a state with power only to solicit orders subject to approval at the home office in another state, from which point the ordered product is shipped to the customer. Because of this there seems to exist a quite widespread impression that the location at the time of sale of the product sold is not determinative, and that no matter where the article sold may have been when the order for it was taken, that is, whether it was then within or then without the state, the mere sending of the order to the home office for approval renders the entire transaction one of interstate commerce. This, of course, is not true. When the product has been shipped into a state by a foreign corporation, not pursuant to an order previously taken, the interstate commerce transaction ends with the delivery of the product in that state. The foreign corporation is still the owner, and any order subsequently taken in respect of such property, for delivery within the state, relates to property locally held and locally sold; and the sending of the order relating to such property to the home office in another state for approval there cannot remove the insignia of domestic business from the transaction. However, if the property sold is in a state other than the one in which the order for it was solicited, the taking of such order, without more, puts into motion and directly relates to, an interstate commerce transaction, that is, a shipment of goods from one state to another, and the foreign corporation is entitled to the protection of the Commerce Clause.

In many instances, because of credit information and past dealings with customers, the affirmation of an order at the corporation's home office is merely a matter of course; and to say that the sale of an article locally held before any sale is attempted, and thus one which has come to a state of rest and become a part of the general property within the state, is an interstate commerce transaction merely because the order is approved without the state, is not to represent the true facts as to such sale. The order must itself be the means of inaugurating an interstate commerce shipment, and not simply have relation to property owned by the foreign corporation that had previously been shipped by it into the state.

Domestic Corporations

California.

On the matter of the former "double liability" of stockholders of California corporations. The California Constitution, prior to November 4, 1930, provided that a stockholder shall be personally liable, proportionately to his shareholding interest, for all debts and liabilities contracted or incurred by the corporation during the time he was a stockholder. Section 322, California Civil Code, embodying a like provision, was enacted by the State legislature. On November 4, 1930, by vote of the people, the constitutional provision was repealed. On May 15, 1931, the legislature repealed Civil Code Section 322 (Chapter 257, Laws of 1931, effective 91 days after enactment), the repealing act carrying a saving provision that the repeal shall not impair or affect any remedy or any cause of action for liability incurred or accrued prior to its effective date. Action here to enforce the alleged stockholder's liability on a liability incurred between January 1 and April 1, 1931. It was urged that the stockholder's liability was continued by the existing legislative enactment, independent of any constitutional provision. The United States District Court, N. D. California, S. D., after saying that "at common law no individual liability was imposed upon the members or stockholders of a corporation" and that "the history of stockholders' proportional liability in California shows such liability to be of constitutional origin," holds that Section 322 of the Civil Code "was repealed eo instante by necessary implication" when the constitutional provision was repealed by the people,—and so, here no individual liability. *Hoffman v. W. H. Worden Co. et al.*, 2 F. Supp. 353. H. W. Hutton, of San Francisco, for libelant. Joseph E. Bien and Werner Olds, both of San Francisco, for respondents.

Georgia.

Service of process by publication on dissolved corporation held valid. A Georgia corporation, after having been dissolved, was served with process by publication under Section 2261, Civil Code 1910 (applicable, in terms, to a corporation having no public place of doing business and having no individual in office on whom service may be made). Section 2245 (2), Michie's Code, 1926, (a 1918 Act), specifically provides alternative modes by which process *may* be served in the case of a dissolved corporation. The validity of the service by publication was assailed, it being contended that the service should have been by one of the manners described in Section 2245 (2). The Court of Appeals of Georgia, Division No. 2, affirms the judgment below for the plaintiff (in each case), sustaining the service. The court says that the methods prescribed by Section 2245 (2) are permissive only, because of the use of the word "may"; that

Section 2261, Civil Code 1910, is not repealed by implication by the later enactment since the two are not wholly inconsistent, the one with the other, and since the later act fails to cover the entire field embraced by the former legislation. Furthermore, says the court, the use in the later act of the expression "by any form of legal process" (which the court reads to be a third permissive method stated therein) "must necessarily be taken to mean that service upon such a dissolved corporation might be perfected in any manner in which service could be perfected upon an active corporation still engaged in business." *Fairfax Bldg. Co. v. Oldknow; same v. Southern Theatre Equipment Co., Inc.*, 167 S. E. 538. Herbert J. Haas, Geo. B. Tidwell, and Bertram S. Boley, all of Atlanta, for plaintiff in error. Sutherland & Tuttle and Jos. B. Brennan, all of Atlanta, for defendants in error.

Idaho.

Stockholder bringing successful suit for benefit of his corporation is entitled to attorney's fees from corporation. A minority stockholder of a corporation brought this action, for the benefit of the corporation and all other stockholders similarly situated, to compel the return to the corporation of a large number of its shares of stock alleged to have been sold by the board of directors, without authority, to one of the directors. "There was no fraud." Before trial the stock was returned to the corporation leaving the sole question to be determined, on appeal (non-suit below)— "Is the appellant entitled to attorney's fees?" (there being no proof of any expense incurred other than taxable costs which follow the judgment). The Supreme Court of Idaho says that "the right to maintain such an action has been recognized by this court" and "where the suit is successful and the corporation is thereby enriched, the plaintiff stockholder is entitled to reimbursement from the corporation for his reasonable costs, expenses, and attorney's fees" (authorities cited). But—was the restitution due to the initiation and maintenance of the present suit? If so appellant is entitled to recover; otherwise, not. "The trial court should have heard the evidence on this point"; hence the reversal of the non-suit, with directions to grant a new trial to determine the correct answer to this question. *Greenough v. Coeur d'Alenes Lead Co. et al.*, 18 P. (2d) 288,—rehearing denied. Gray & McNaughton, of Coeur d'Alene, and James A. Wayne, of Wallace, for appellant. Walter H. Hanson and F. C. Keane, both of Wallace, for respondents.

Indiana.

Redemption provision in preferred stock contract not invalid. In an action by a holder of preferred stock of an Indiana corporation he seeks, among other remedies, to enforce redemption of his shares as provided by the contract of issue as of the then past date specified in the contract (and on the preferred stock certificates) "with inter-

est." The Indiana Appellate Court, in Banc, holding that in this regard at least (we do not go further, here) a sufficient cause of action is stated, reverses the court below with instructions to overrule appellees' demurrer to the complaint. It was urged (in this particular regard) that the provision in the stock certificate in reference to its redemption is invalid as being contrary to law and against public policy. The Indiana law makes provision for the issuance of redeemable preferred stock at time or times and on terms and conditions as stated in the certificate. The court says, citing authorities—texts and cases: "Under the law a preferred stockholder whose stock has matured is entitled to have the same redeemed pursuant to the terms of the instrument, unless the redemption of such stock cannot be done without prejudice to the rights of the creditors of the corporation, provided, however, that there is no fraud upon other stockholders." *Cring v. Sheller Wood Rim Mf'g. Co. et al.*, 183 N. E. 674. Roscoe D. Wheat, of Portland, for appellant. James R. Fleming, of Portland, for appellee.

Louisiana.

Corporations are intellectual beings. On the authority of the Supreme Court of Louisiana, which says: "Corporations are intellectual beings different and distinct from all the persons who compose them." The court affirmed the judgment of the court below in this case to the merits of which we do not go. *Mente & Co., Inc., v. Louisiana State Rice Milling Co., Inc.*, 146 So. 28. Monroe & Lemann and Walter J. Suthon, Jr., all of New Orleans, for appellant. Milling, Godchaux, Saal & Milling, of New Orleans, for appellee.

Michigan.

Income producing realty may not be exchanged by corporation, organized to hold and manage real estate as a source of profit, for shares of its own stock, without unanimous consent of shareholders. At the time the bill here was brought a Michigan statute provided (it still so provides) that a corporation may purchase its own shares of stock if this be done "in furtherance of the objects of its existence." Later the statute was amended so as to prohibit the use of a corporation's funds or property for the purchase of its own shares "when such use would cause any impairment of the capital of the corporation." The Supreme Court of Michigan says that it refers to this later amending proviso merely to give "pointed meaning to the somewhat equivocal expression in the earlier statute." Continuing: "We do not say that, under no circumstances, may a corporation exchange its real estate in purchase of its stock. We do hold that a corporation, organized to hold and manage real estate as a source of profit, cannot exchange its source of earning power or any considerable part thereof in purchase of its stock without unanimous consent of the stockholders." Suit to restrain the consummation of a certain agreement looking to the purchase by a corporation of shares of

its stock giving in payment income producing corporate real estate; the court affirms the decree below for the plaintiff. *Stott v. Orloff et al.*, 246 N. W. 128. Butzel, Levin & Winston and Lightner, Hanley, Crawford & Dodd, all of Detroit, for appellant. Edward N. Barnard, of Detroit, for appellee.

Minnesota.

A certain company is not an exclusively manufacturing corporation. The corporation here involved was organized for the purpose of "buying, selling, manufacturing and dealing in milk, cream, ice cream, cheese and butter, and handling, managing, owning, operating, and controlling a creamery or creameries in the usual course of such business, and to do and perform all acts and things usual, requisite and necessary on the premises." Sufficient for present purposes to say that the Supreme Court of Minnesota agrees with the court below that a corporation with such powers is not "an exclusively manufacturing corporation." *In re Olivia Creamery & Produce Ass'n.*, 246 N. W. 480. Edward Lindquest, of Olivia, for appellant. Robert Beach Henton, of Olivia, for respondent.

New Jersey.

Pledgor of stock certificate indorsed in blank (collateral on notes), no transfer effected on corporation's books, is entitled to receive the dividends declared on such stock. Stock certificates, indorsed in blank, were deposited with a bank as collateral security on notes given by the stockholder, a corporation. The loan agreement "sets forth in great detail certain rights of the pledgee" but is silent as to whether or not the pledgee shall have the right to collect dividends. There was no transfer of the shares on the books of the issuing corporation. After the pledge dividends were paid regularly to the pledgor stockholder, without question; then a receiver was appointed for the pledgor; a dividend check was received and cashed by the receiver; another dividend check is in his hands, uncashed. Receiver of the pledgee bank seeks to have the proceeds of the first of these two dividend checks, and the second, uncashed, check, turned over to him. The New Jersey Court of Chancery says: "The question as to who is entitled to the dividends under such circumstances does not appear to have been passed on by our courts. The right of the pledgee of stock to dividends has been adverted to but never decided when directly before the court." After saying that the pledgee must have known that the dividends would be paid to the stockholder of record the court concludes—"In the absence of any provision for assignment of dividends, I must therefore find that the terms of the pledge gave the pledgee no right to either dividend." *Mandel v. North Hudson Inv. Co.*, 164 A. 455. Rinaldi & Shanley, of Union City, for receiver of the bank. Insley, Vreeland & Decker, of Jersey City, for receiver of the pledgor shareholder.

New York.

Right to pursue innocent stockholder for dividend illegally paid. Action by the trustees in bankruptcy of an insolvent corporation to recover the amount of dividends paid, one year prior to the adjudication in bankruptcy, on the ground that such were unlawfully paid out of capital. The complaint does not allege that the dividends were paid during insolvency, or that the payments rendered the corporation insolvent, or that there was any bad faith on the part of the stockholders or that the latter had any knowledge that payment was from capital. The New York Supreme Court, Special Term, New York County, says that "The question directly presented for consideration is: May a stockholder be required to refund dividends seemingly declared in the regular course of business out of profits but actually declared and paid out of capital (1) when the corporation was not insolvent at the time the dividends were paid but subsequently became so, and (2) when the stockholders had no knowledge that the dividends were paid out of capital." The court emphasizes the lack of certain allegations in the complaint, as stated above; it mentions but quickly rejects the possibility of the application of the so-called "trust fund" doctrine; it cites Section 58 of the New York Stock Corporation Law, which renders directors liable in case of payment of dividends which shall impair capital, but does not in terms impose any liability on the recipient shareholders; says, "no case in this jurisdiction has passed squarely on the question here presented," and "to invoke the rule urged by the plaintiff would lead to harsh consequences"; and grants the motion to dismiss the complaint. The specific holding of the court is "that in a suit by a trustee in bankruptcy, innocent stockholders will not be required to repay dividends declared out of capital, where it does not appear that the corporation was insolvent at the time of the payment of dividends, or that it was rendered insolvent by such payment. That is the extent of this decision, for it is all I am called upon to decide on the pending motion." *Quintal et al. v. Adler et al.*, 262 N. Y. Sup. 126. Louis Martin Levy, Sidney Newborg, Elwood G. Feldstein, David Haar, and Kurzman & Frank, all of New York City, Sol. Rubin, of Mamaroneck, and Philip J. Jacoby, Harry Lyons, Gilbert & Gilbert, and Max Frank, all of New York City, for the motion. Gleason, McLanahan, Merritt & Ingraham, of New York City (John W. Simpson II, and Hamilton A. Long, both of New York City, of counsel), opposed.

Good faith v. bad faith; pledgee of stolen stock certificates. In the present case it was necessary for plaintiff, a pledgee of stolen shares of stock (issued since the enactment of the New York "Uniform Stock Transfer Act," and so, within the provisions of that statute), to establish that it came into possession of the shares as pledgee in good faith. This digest is for the purpose, merely, of reproducing certain portions of the opinion (Municipal Court of New York, Borough of Manhattan, Fourth District). "To impugn

good faith, guilty knowledge is not necessary, though negligence alone is not sufficient. But bad faith, once established, is a fatal omen in these transactions. And to establish bad faith direct proof is not necessary; circumstantial evidence will suffice. Bad faith may be born of circumstances; circumstantial evidence swiftly carrying one from pretended ignorance to presumed bad faith; though it may be impossible to definitely show when ignorance turns to doubt and doubt becomes suspicion and suspicion ripens into bad faith. Hence, when the proof reveals a state of facts incompatible with the existence of good faith, a pretense of ignorance cannot clothe the transaction with immunity nor purge it of its taint." The court says (we quote exactly): "Here one finds no 'innocence abroad.'" *Bank of United States v. Cooper-Bessemer Corporation,* 261 N. Y. Sup. 687. Carl J. Austrian, of New York (Warren C. Fielding, and Bernard Fields, both of New York, of counsel), for plaintiff, Shearman & Sterling, of New York (Leo J. Bondy, of New York, of counsel), for defendant.

Stockholder dissenting to merger of corporations—banks, however. The New York banking law authorizing and prescribing procedure for the merger of banking corporations provides that any stockholder not voting in favor of the agreement of merger, may object to the merger and demand payment for his shares, and thereafter, the merger having been effected, may apply for the appointment of appraisers, etc. In the instant case it was contended that these rights adhered to a shareholder of the merging (absorbed) bank, only. The New York Court of Appeals, reversing the orders of the courts below, holds that the statute extends equal rights to petitioner-appellant, a shareholder in the absorbing and continuing bank. The court in directing that appellant's motion for the appointment of three persons to appraise his stock be granted, he having dissented to the merger and demanded payment for his shares and the merger having been accomplished, says—"The right created by the Legislature cannot upon any ground of assumed public policy be limited by the courts to stockholders of a particular corporation." *In the matter of the application of Eddie Cantor, as stockholder of the Manufacturer's Trust Company,* 261 N. Y. 6, 184 N. E. 474. David L. Podell, Herman Shulman and Benjamin Algase, all of New York City, for appellant. Joseph M. Hartfield and John A. Gifford, both of New York City, for respondent.

Pennsylvania.

Employee's agreement to sell stock back to vendor, on leaving employment, does not obligate vendor to buy back. Action by former employee of a corporation to recover, with interest, the amount paid by him while an employee to a stockholder of the company for stock in the corporation under an agreement by which he obligated himself to resell his stock, at the price paid, to the one from whom he bought it, in the event of his leaving the employ of the

company. The Supreme Court of Pennsylvania affirms the judgment below for the defendant, saying that by the terms of the agreement, by which the vendee agreed to resell, the vendor was given an option to buy, merely, and, consequently, that there was no obligation on his part to buy. *Ward v. Blum*, 164 A. 596. P. H. Granger (of Reber, Granger & Montgomery) and Edmund J. Bodziak, both of Philadelphia, for appellant. Loewenstein & Winokur and Milford J. Meyer, all of Philadelphia, for appellee.

Rhode Island.

Rights, as creditor, of sole stockholder of corporation in receivership. On the question of the allowance of a claim by the sole stockholder of a corporation in the hands of receivers by amendment of the schedule filed by them. Claim represents money loaned and unpaid salary earned. The Supreme Court of Rhode Island says that the separate entity of a corporation is not to be disregarded unless there appears some element rendering it unjust or inequitable not to so disregard it; it is entirely lawful for stock ownership of a corporation to be concentrated in one individual; loans made in good faith by a sole shareholder to his corporation are entitled to recognition just as much as if made by a stranger, and are recoverable as a claim; a sole stockholder rendering active service to his corporation as an officer thereof does not owe such duty to the corporation and is entitled to just compensation for his labor; formal action by the directors on such matters as the loans and compensation for services here involved are generally for the protection of stockholders and the rule ceases to be of importance, generally, when all the stock is owned by one person—but here there was evidence showing acquiescence by the other directors. The court finds nothing to indicate less than entire good faith, complete fairness, and strict honesty, and affirms the decree below amending the receivers' schedules of claims, allowing the claim. *Vennerbeck & Clase Co. et al. v. Juergens Jewelry Co.*, 164 A. 509. Tillinghast & Collins and James A. Tillinghast, all of Providence, for appellants. Ralph M. Greenlaw and Edwin J. Tetlow, both of Providence, for appellee Henry F. Juergens.

Texas.

Determination from established facts of question of separate entities of parent and subsidiary corporations rests with court not with jury. The Court of Civil Appeals of Texas (Amarillo) says that with the findings of the jury on controverted facts together with the facts not controverted, the determination of the issue of unity or corporate entity in the case of parent and subsidiary corporations, being a question of law or of mixed law and fact must rest with the court. "Upon ascertainment of all the facts, it is the prerogative of the court and not the jury to look through the forms to the substance of the relations existing between the corporations." *Con-*

tinental Supply Co. et al. v. Forrest E. Gilmore Co. of Texas et al., 55 S. W. (2d) 622. Appearances: C. G. Dailey, of St. Louis, Mo., Randolph, Haver, Shirk & Bridges, Tulsa, Okla., F. H. McGregor and Fischer & Fischer, all of Amarillo; W. M. Lewright, Pampa.

Foreign Corporations

California.

Foreign corporation's books, kept in California, are there open to inspection of shareholders. The California District Court of Appeals, First Appellate District, holds that the use of the words "every corporation" in Section 355 of the California Civil Code which authorizes inspection of every corporation's share register, books of account, etc., by a shareholder, at a reasonable time and for a purpose reasonably related to his interest as a shareholder, causes the provision to be applicable not only to domestic corporations but to foreign corporations doing business in California and whose books are in California. A Delaware corporation, doing business in California, and having its books in California, contended otherwise in the present case. *C. W. Getridge v. State Capital Co., et al.*, 18 P. (2d) 375. Ellis, Lyman & Steindorf, of San Francisco, for appellants. Milton U'Ren, of San Francisco, for respondent.

Missouri.

Foreign railway company having business promoting agent in state is not, without more, doing business in state. Briefly—because railroad. Mexican railroad has passenger and freight collecting agent in Missouri; he makes no contracts, issues no bills of lading, sells no tickets,—in fact actually does nothing more than advertise his road (urging its use, quoting rates and traffics, supplying schedule and travel information, etc.). Company, otherwise, is not engaged in business in Missouri. In action against the company brought by another foreign corporation process was served on the agent referred to above. The Supreme Court of Missouri, Division No. 1, quoting the pertinent law provision, says—"Thus a foreign corporation becomes amenable to personal service only if it is doing business within this state," and holds that there was no doing of business, here, sufficient to validate the service. *State ex rel. Ferrocarriles Nacionales de Mexico v. Rutledge, Judge, et al.*, 56 S. W. (2d) 28. George E. Mix, of St. Louis, for National Rys. of Mexico. Grant & Grant, of St. Louis for respondents.

New Jersey.

Unqualified foreign corporation may defend suit against it; force of levy under attachment made within four months prior to filing of bill for appointment of receiver. The New Jersey statutes provide that an unlicensed foreign corporation doing business in the

state may not maintain an action on a contract made by it in the state. The United States District Court, District of New Jersey, says that the statute being silent as to the right to defend in an action brought against such a corporation it must be concluded that such right exists. "Indeed there would be some doubt as to the validity of such a closing of the courts of the state to a corporation defendant of another state if the statute attempted it." A New Jersey statute provides that a levy under an attachment made within four months prior to the filing of a bill for the appointment of receivers shall be deemed null and void in case a receiver is appointed; another section of the same act brings foreign corporations doing business in the state within its ambit, so far as its provisions may be applied. The court says that it would follow a New Jersey state court decision on the question of whether this provision is restricted in its application (as was contended) to licensed foreign corporations or runs as well to those that are not licensed, but finds no such decision, and so must itself determine the matter. Its holding is that the fact that defendant foreign corporation (receivership within four months, etc.) had no authority to transact business in the state "ought not to and does not prevent the operation" of the section in question. *Marquette Bailey Lumber Co. v. Dexter Lumber & Flooring Co.*, 2 F. Supp. 3. McDermott, Enright & Carpenter and James D. Carpenter, Jr., all of Jersey City, for Chase National Bank of New York. Wall, Haight, Carey & Hartpence, and George Tennant, all of Jersey City, for Dexter Lumber & Flooring Co.

New York.

A certain newspaper publishing corporation, foreign to New York, is held to have been doing business in New York, and service of process on its New York advertising soliciting agent is held to be good. The facts as developed are that the foreign paper publishing company has an agency in New York City for the solicitation of advertising and of subscriptions. It occupies New York office space (there is no evidence of realty owned or of a written lease), uses there ordinary office equipment, has its name over the door, in the building directory, and in the telephone directory, carries in its publication the New York office address as being that of its branch advertising and circulation office and shows in such announcement the name of the man on whom summons was served in the instant case,—he being the advertising agent. There was also a circulation agent, he having under him numerous salesmen working on a commission basis. "The agents not only solicited orders, but accepted therewith such payments as they could then obtain." The company had a "small" New York bank account; salaries and commissions were paid by the company from its home office outside of New York. Service, as stated, was on the advertising man, as "managing agent" (Section 229, Civil Practice Act). If the company was present in New York, doing business in New York, and if the one served was a "managing agent" within the meaning of the term as used in the

statute, the service was good. The New York Supreme Court, Special Term, New York County, denies defendant's motion to vacate service. *Brown v. United States Daily Pub. Corporation,* 262 N. Y. Sup. 551. Goodman Block, of New York City (Dorothy M. Spitzer, of New York City, of counsel), for plaintiff. Cohen, Cole, Weiss & Wharton, of New York City, for defendant.

North Carolina.

Venue, in case of suit by domesticated foreign corporation. Plaintiff, here, a Virginia corporation, is licensed to do business in North Carolina, having complied fully with the provisions of the foreign corporation laws of the state. It has designated Pasquotank County as the location of its principal office in North Carolina. On bringing suit in such county, on a promissory note, against certain residents of Johnston County, the defendants moved to have the cause removed to the county of their residence. The motion was granted by the trial court. The Supreme Court of North Carolina reverses. In such a suit as this, under North Carolina law, the action must be tried in the county in which the plaintiffs or the defendants, or any of them, resided at the time of its commencement. The statutes provide that for the purpose of suing or being sued the principal place of business of a domestic corporation is its residence. The question here is whether or not "the plaintiff may be regarded for the purpose of venue as a domestic corporation." The court says that the foreign corporation by domesticating "thereby acquired the right to sue and be sued in the courts of this state as a domestic corporation" and as the place of its residence as defined by the statute is the county of Pasquotank it had the right to bring its suit in that county. *Smith-Douglass Co. Inc. v. Honeycutt et al.,* 167 S. E. 810. J. H. LeRoy, Jr., of Elizabeth City, for appellant. Leon G. Stevens, of Smithfield, for appellees.

South Carolina.

Adjustment of complaints within state by one acting as agent for withdrawn foreign corporation constitutes the doing of business within state by such corporation. The corporation here involved, a corporation foreign to South Carolina, is alleged to have expressed in writing to the Secretary of State of South Carolina its desire to withdraw from the state; there was sufficient evidence, so says the Supreme Court of South Carolina, to warrant the conclusions of the trial court (1) that the one on whom summons was served in an action against the corporation was an agent of the corporation for that he held himself out to be such and that he endeavored, at the behest of the corporation, to compose a controversy with one of its customers, the customer being advised that should the complaint not be adjusted to his satisfaction the corporation should be informed to that effect, and, (2) that, thereby, the corporation was attempting to transact business in South Carolina even though it had given

notice of its desire to withdraw from the state. So, the holding is that the corporation was doing business in the state, that the one on whom summons was served was its authorized agent, and that the motion to set aside the service and complaint be denied. *Richardson v. Frigidaire Corporation et al.*, 167 S. E. 681. Edward L. Craig, of Columbia, for appellant. Cole L. Blease and S. M. Busby, both of Columbia, for respondent.

Virginia.

On what constitutes doing business; lease v. sale; installation. A corporation, foreign to Virginia, and not licensed to do business in that state, entered into a contract, closed in New York, with a Virginia concern, covering the leasing by the former to the latter, for a period of ten years, of a cable cash carrier system, payment to be quarterly and to cover cost of installing and continuing the system, the lessor to furnish without charge all parts necessary to keep the system in repair. Action on the contract; one defense, the doing of business in Virginia by an unqualified corporation. The Virginia Supreme Court of Appeals sustains the judgment below for the plaintiff, all grounds of defense being struck out by the court on motion. Citing and quoting from United States Supreme Court cases the court shows that leasing, as well as selling, may involve or be subject to interstate commerce as differentiated from local business and then, on the question of installation, cites and quotes from some of the leading "doing business" cases involving that phase of the problem, and says, in conclusion: "There are authorities *contra* to those cited here but the decided weight of authority of judicial pronouncement impels us to the decision that the Lamson Company, the appellee, in the present case was engaged in interstate commerce in the transaction involved and so it was not subject to our domestication statutes." *Johnston v. Lamson Co., Inc.*, 167 S. E. 417. J. D. Johnston, Roanoke, for plaintiff in error. Woods, Chitwood, Coxe, & Rogers, Roanoke, for defendant in error.

Taxation

Florida.

State chain store license tax act held invalid. In our digest of this case below (the Florida Supreme Court upheld the state chain store taxing act against all contrary contentions advanced) in The Corporation Journal for October, 1932, at page 234, we said: "The taxing act here questioned is Chapter 15624, Laws of Florida, 1931. The annual license tax for one store is $5.00; for each additional store, to and including fifteen stores in all, under the same general management, etc., if located in one county, the fee prescribed by the statute is $10.00,—if located in different counties, it is $15.00; fee advances, graduated according to the increase in the number of stores, to $40.00 for each store in excess of 75 stores, if all are

located in one county, or $50.00 for each additional store in excess of 75 stores if such are located in different counties." The United States Supreme Court, in a six to three decision, reverses (March 13, 1933), and remands, because of what it holds to be the unconstitutional discrimination existing in the provision which imposes a greater tax liability if the stores are located in more than one county than if such stores were placed within a single county. (If 14 stores are operating in one county, at $10.00 per store, and a new store is opened across the county line, the fee becomes $15.00 per store; whereas if the new 15th store is located in the same county as are the original fourteen, the fee per store remains at $10.) The court is "unable to discover any reasonable basis for this classification." In all other respects, to the extent assailed and before the court, the act is sustained. *Louis K. Liggett Company, et al. v. Lee, Comptroller of the State of Florida*, 53 S. Ct. 481. Thomas B. Adams and W. E. Kay, of Jacksonville, and R. M. Sterne, of New York City, for appellants. H. E. Carter, Tallahassee, for appellees.

Oklahoma.

Situs of tank cars of foreign corporation for personal property tax purposes is at refinery, within state, to which they always return for reloading. An Illinois corporation, engaged in the business of producing and selling refined petroleum products, is licensed to do business in Oklahoma within which state it has its refinery, in Pawnee county. It has track storage facilities at the refinery for about 80 cars; it has additional car storage facilities in Osage county; it owns and operates about 380 tank cars; these are used for transporting in intrastate and interstate commerce the company's product from the refinery; the cars are all marked for return to the refinery when empty and are so returned. The Supreme Court of Oklahoma holds that all of the company's cars have a taxable situs for personal property tax in the county (Pawnee) in which the refinery is located; against the assertion that the cars are in Pawnee county temporarily only as an incident to interstate commerce the court answers that the absence of the cars from the refinery is but an incident to the conduct of the company's business, and as the corporation has but the one refinery the situs of the cars is there. It is held that there is no warrant in law for the employment of an averaging method to determine the number of cars properly assessable for taxation on assessment day. None of the cars may be subjected to personal property tax in Osage county (the point of storage in event of congestion at the refinery). *In re Johnson Oil Refining Co.'s Property* (4 cases), 19 P. (2d) 168. C. E. Mitchell, Co. Atty., Ed Waite Clark, and P. E. Rowe, all of Pawnee, and R. K. Robertson, of Sapulpa, for Pawnee County. Chas. Y. Freeman, of Chicago, Ill., McCollum & McCollum, of Pawnee, and West, Gibson, Sherman, Davidson & Hull, of Tulsa, for Johnson Oil Refining Co.

CORPORATE MEETINGS HELD

During the past few weeks meetings of the corporations named below, among many others, have been held at some one of the offices of The Corporation Trust Company.

Liggett and Myers Tobacco Co.
Godchaux Sugars Inc.
Oklahoma Natural Gas Corp.
P. Lorillard Company
Savage Arms Company
Peoples Drug Stores, Inc.
United Fruit Company
North West Utilities Company
Shell Pipe Line Corporation
American Steel Foundries
Stone & Webster Incorporated
The Pennroad Corporation
North American Aviation Corp.
U. S. Dairy Products Corporation
The Quaker Oats Company
Columbia Gas & Electric Corp.
Consolidated Laundries Corp.
General Cable Corporation
Transamerica Corporation
The A. C. Gilbert Company
International Salt Company
Rolls Royce of America, Inc.
Winchester Repeating Arms Company
American Light & Traction Company
American Ice Company
Chicago Pneumatic Tool Company
Chicago Junction Railways and Union Stock Yards Company
The Associated Laundries of America, Incorporated
American Commercial Alcohol Corporation

Some Important Matters for May and June

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ARIZONA—Report to Corporation Commission and Registration Fee due during June.—Domestic and Foreign Corporations.

ARKANSAS—Income Tax Return and Return of Information at the source due on or before May 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

DOMINION OF CANADA—Annual Summary due between April 1 and June 1.—Domestic Companies having capital stock.

FLORIDA—Annual List of Officers and Directors due on or before June 1. Domestic and Foreign Corporations.

Annual Report and Fee due on or before July 1.—Domestic and Foreign Corporations.

ILLINOIS—Annual Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

MAINE—Annual Franchise Tax Return due on or before June 1.—Domestic Corporations.

MINNESOTA—Sworn Statement of Capital Stock due on July 1.—Foreign Corporations.

MISSOURI—Annual Franchise Tax due on or before May 15.—Domestic and Foreign Corporations.

Income Tax due on or before June 1.—Domestic and Foreign Corporations.

MONTANA—Annual Statement due within two months from April 1.—Foreign Corporations.

Annual License Tax based on net income due on or before June 15.—Domestic and Foreign Corporations.

NEBRASKA—Annual Report and Fee due on or before July 1.—Domestic Corporations.

NEVADA—Annual List of Officers and Designation and Acceptance of Resident Agent due on or before July 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise Tax Report (under Art. 9-A, Tax Law —Form 3-IT) due on or before July 1.—Domestic and Foreign Business Corporations.

NORTH CAROLINA—Annual Report to determine amount of franchise tax due July 1.—Foreign Corporations.

OREGON—Annual Statement due during June.—Domestic and Foreign Corporations.

RHODE ISLAND—Corporate Excess Tax due on or before July 1.—Domestic and Foreign Corporations.

TENNESSEE—Annual Report and Franchise Tax due on or before July 1. —Domestic and Foreign Corporations.

UNITED STATES—Second Installment of Income Tax due June 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

VIRGINIA—Income Tax due on or before June 1.—Domestic and Foreign Corporations.

WASHINGTON—Income Tax due on or before June 1.—Domestic and Foreign Corporations.

License Fee due on or before July 1.—Domestic and Foreign Corporations.

WEST VIRGINIA—License Tax Statement due on or before July 1.—Domestic Corporations.

Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before July 1.—Foreign Corporations and those Domestic Corporations whose principal places of business or chief works are located in other states.

WISCONSIN—Income Tax due on or before June 1.—Domestic and Foreign Corporations.

WYOMING—Annual Statement and License Tax due on or before July 1. —Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

Special Report—The Case Against Corporate Representation by Business Employes. Specific experiences of different corporations with the handling by untrained corporate representatives of such matters as service of process, notices of taxes due, filing of corporation reports, etc.

Amendments to Delaware Corporation Law, 1933. Presents the complete text of the 1933 amendments to Chapter 65 of the Revised Code, all new matters being shown in italics, and repealed matter in brackets, so a complete picture is conveyed of the changes effected, while explanatory comments show the purpose and result of each change.

What Constitutes Doing Business. (Revised to March 1, 1933.) A 314-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them accessible also by either case name or topic.

Amateur Corporate Representation. A booklet dealing with some of the weaknesses of placing a company's statutory representation in the hands of business employes or others not trained in the matters involved.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1931.

Incorporation in Canada Under the Dominion Act. Explains the procedure for incorporation of Canadian companies, the requirements, taxes, maintenance of office, etc., and all the special features of the Dominion Companies Act.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

Questionnaire on Business Outside State of Organization. This is a form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.

Why a Transfer Agent? The question of why corporations, even those of small capitalization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfer are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.